



Federal Communications Commission
Consumer & Governmental Affairs Bureau
Washington, D C. 20554

CGB

02-278

OCT 21 2003

Control No. 0302925/kah

The Honorable Jim DeMint
U S. House of Representatives
300 East Washington Street
Greenville, SC 29601

RECEIVED

OCT 28 2003

Federal Communications Commission
Office of the Secretary

Dear Congressman DeMint:

Thank you for your letter on behalf of your constituent, Mr. Bobby J. Jenkins, III, regarding the Federal Communications Commission's (Commission) recent amendments to the rules implementing the Telephone Consumer Protection Act of 1991 (TCPA). Specifically, Mr. Jenkins seeks clarification as to whether or not his company, insurance business, is subject to the Commission's "do-not-call" rules.

On July 3, 2003, the Commission released a Report and Order, which adopted rules establishing a national do-not-call registry and other amendments to its telemarketing and facsimile advertising rules. The national do-not-call registry is nationwide in scope, includes all telemarketers, with the exception of certain non-profit organizations, and covers both interstate and intrastate telemarketing calls.

The rules provide an exemption from the national do-not-call list for calls to consumers with whom the seller has an "established business relationship." However, once a customer asks to be placed on a company-specific do-no-call list, the company may not call the consumer again regardless of whether the consumer continues to do business with the company. In addition, the Commission concluded that sellers may contact consumers registered on a national do-not-call list if they have obtained the prior express permission of those consumers. Such permission must be evidenced only by a signed, written agreement between the consumer and the seller. Although telemarketers may not call consumers on the national do-not-call list to request their written permission to be called, they may use some other means such as direct mailing.

In addition, the Commission determined that the "do-not-call" rules do not apply to calls made to persons with whom the marketer has a personal relationship. A "personal relationship" refers to an individual personally known to the telemarketer making the call, including family members, friends and acquaintances of the caller. However, the Commission declined to establish an exemption for calls made to set "face-to-face" appointments. We concluded that such calls are made for the purpose of encouraging the purchase of goods and

NO 100-1-1000
100-1000

services and therefore fall within the statutory definition of telephone solicitation. Therefore, such calls are subject to the national do-not-call rules.


On September 8, 2003, we issued the Report on Regulatory Coordination (Report) to Congress containing an analysis of the telemarketing rules put into effect by both agencies and of few inconsistencies between the Federal Trade Commission's and FCC's rules. Enclosed is a copy of the Report in which there is discussion concerning the FCC's general proposal to remedy inconsistencies.

Enclosed is additional information that Mr. Jenkins may find helpful. The Commission has available an e-mail service designed to apprise consumers about developments at the Commission, to disseminate consumer information materials prepared by the Commission to a wide audience and to invite comments from other parties on Commission regulatory proposals. This free service enables consumers to subscribe and receive FCC fact sheets, consumer brochures and alerts, and public notices, among other consumer information. To subscribe, an individual would send an e-mail to subscribe@info.fcc.gov and in either the subject line or body of the message put: subscribe fcc-consumer-info first name last name (substitute their first and last name, for example, "subscribe fcc-consumer-info John Doe").

Information on all telecommunications-related issues can be accessed via the Internet from the Commission's Home Page located at <http://www.fcc.gov> and the Consumer & Governmental Affairs Bureau's web site link at <http://www.fcc.gov/cgb> or by calling 1-888-CALL-FCC. TTY users may call 1-888-TELL-FCC.

We appreciate Mr. Jenkins' comments. We have placed a copy of his correspondence in the public record for this proceeding. Please do not hesitate to contact us if you have further questions.

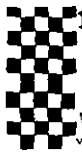
Sincerely,


K. Dane Snowden

Chief

Consumer & Governmental Affairs Bureau

Enclosures



10/02/2003 14:49

8642332160

JIM DEMINT

PAGE 01

JIM DeMINTDISTRICT SOUTH CAROLINA
www.demint.house.govTRANSPORTATION AND
INFRASTRUCTUREEDUCATION AND THE
WORKFORCE

SMALL BUSINESS

CHAIRMAN
SUBCOMMITTEE ON WORKFORCE
EMPLOYMENT AND GOVERNMENT
PROGRAMS**Congress of the United States
House of Representatives****From the Office of Congressman Jim DeMint**
300 E. Washington Street, Suite 101
Greenville, SC 29601
Phone: (864) 232-1141, Fax: (864) 233-2160506 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-6030300 EAST WASHINGTON STREET
GREENVILLE, SC 29601
(864) 232-1141146 NORTH CHURCH STREET
BTC #50 SUITE 302
SPARTANBURG, SC 29306
(864) 582-9422UNION, SC
(864) 427-2205*CCF*
DO NOT CALL
LIST
*2925***Fax From:**

- ☐ **Kelly Long**
District Operations Director
- ☐ **Mark Cothran**
Field Representative
- ☐ **Jeff Holt**
Constituent Service Representative
- ☐ **Ellen Weaver**
Executive Assistant
- ☒ **Danielle Gibbs**
Constituent Service Representative
- ☐ _____
Intern

Sent To:

Name: JIM BALAGUER

Company: FCC

Fax Number: 202 415 2806

Pages: 3 (including cover)

Date: OCT 03 2003

Comments:

Jim

As mentioned in my email this morning, here is Mr. Jenkins's letter.

Please review & advise. Thanks.

PRINTED ON RECYCLED PAPER

RECEIVED TIME OCT. 3. 9:47AM

PRINT TIME OCT. 3. 9:48AM

JIM DeMINT
4TH DISTRICT, SOUTH CAROLINA
www.demint.house.gov
TRANSPORTATION AND
INFRASTRUCTURE
EDUCATION AND THE
WORKFORCE
SMALL BUSINESS
CHAIRMAN
SUBCOMMITTEE ON WORKFORCE
EMPOWERMENT AND GOVERNMENT
PROGRAMS



Congress of the United States
House of Representatives

October 3, 2003

504 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-0030

300 EAST WASHINGTON STREET
GREENVILLE, SC 29601
(864) 232-1141

145 NORTH CHURCH STREET
BTC #58, SUITE 302
SPARTANBURG, SC 29306
(864) 582-8422

UNION, SC
(864) 427-2205

Jim Balaguer
Federal Communications Commission
Office of Legislative and Governmental Affairs
445 Twelve Street SW
Room 8C-432
Washington, D.C. 20554

Dear Jim:

I am writing on behalf of my constituent, Bobby J. Jenkins, III, about the difficulty he is having trying to discern the effects that the national Do Not Call registry has on his business practices. Regarding the insurance industry specifically, Mr. Jenkins would like to have the regulations outlined more clearly than is described in the FCC-03-153A1.pdf document found on the FCC website. He cannot presently access the list and would like to continue with business as usual until there is more clarity. Enclosed is a copy of his letter for your review.

I would greatly appreciate your addressing the questions and concerns mentioned in Jenkins' correspondence, with respect to governing rules and regulations. I have assured Bobby that I would write to emphasize my interest in his case and to help obtain a reply from your office.

Thank you for your help. Please feel free to call Danielle Gibbs of my staff at (864) 232-1141 if you have any questions or need additional information. I look forward to your prompt reply to our Greenville office.

Best regards.

Sincerely,

Jim DeMint
Member of Congress

RECEIVED TIME OCT. 3 9:47AM

PRINTED ON RECYCLED PAPER

PRINT TIME OCT. 3. 9:48AM

Congressman DeMint:

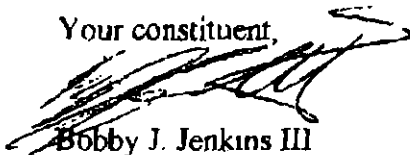
As a small business owner in the upstate, I have attempted to discover how this push for a national registry affects my telemarketing practice to prospects in my local community. So far, I see none.

10 Per the FCC-03-153A1 pdf document found on the FCC website, I understand that the national registry does not apply to intrastate marketing calls. The first paragraph on page 9 and the first full paragraph on page 19 both, among others, lead me to believe that the rules do not affect my business practice.

10 Regarding the insurance industry, I also understand from this document that the national registry does not apply because of state jurisdiction (see again the first paragraph on page 9 and the first full paragraph on page 33). If it does not apply to the insurance industry as a whole, does it not allow one to participate in interstate telemarketing of these insurance products and services without having to use one's own time and money to support this effort? It seems as though I can continue to market to residence with potential insurance needs across state lines.

I know and have followed the rules of telemarketing for the past four years of my marketing practice without problems. I can also appreciate the fact that some people do not want any telemarketing calls. I personally maintain my own do-not-call list. Please verify my interpretation of this document to help me determine what, if any, of my business practice needs to be modified. Thank you for your help.

Your constituent,



Bobby J. Jenkins III